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C O N F I D E N T I A L GUATEMALA 000919

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E.O. 12958: DECL: 2019/10/02
TAGS: [PGOV](#) [PINR](#) [KCRM](#) [KJUS](#) [KDEM](#) [EAID](#) [GT](#)
SUBJECT: Congress Elects Supreme Court Amid Controversy

REF: GUATEMALA 497, GUATEMALA 454, GUATEMALA 009

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State, P/E; REASON: 1.4(B), (D)

Summary

11. (C) On September 30, the Guatemalan Congress elected the thirteen new members of the Supreme Court from a list of 26 candidates. The candidates' list was the result of a reformed and improved selection process which the U.S. and other embassies, as well as CICIG, had successfully encouraged Congress to adopt. CICIG Commissioner Castresana publicly objected to eight candidates, seconded by the Ambassador, but an ad hoc congressional alliance, led by the governing UNE party, nonetheless included six of them in the new court. First Lady Sandra Torres de Colom apparently drove this process, in part to protect her likely presidential bid. CICIG's objections to the six are of varying gravity. Only one of the newly elected magistrates is credibly accused of ties to narcotraffickers or other organized criminals. USAID Guatemala supported a highly credible civil society group that helped screen the candidates from the beginning of the process, and Emboffs worked discreetly with a private judicial power broker to filter out the worst candidates before they could get to Congress. The result is a Supreme Court that appears cleaner than its predecessor. The Constitutional Court is considering a motion that could invalidate the election of three of the worst justices; this could produce confrontation. The dynamics of the final selection process call into question the extent to which the new court will cooperate with CICIG and high-profile prosecutions of politically-connected organized crime. End Summary.

Reforms Improved Court Election Process

12. (C) On September 30, an ad hoc alliance of six congressional parties, led by the governing UNE party, elected the thirteen members of the new Supreme Court, the members of which were negotiated among the participating parties. Congress selected the thirteen from a list of 26 that a "Postulation Commission" presented to Congress. Judging candidates on criteria established in new court election reform legislation, the commission had chosen the 26 from a field of more than 250 candidates (refs a and b). Congress passed the transparency reform legislation in May, at the prompting of the international community, including the Embassy. Leading human rights activist Helen Mack privately said the transparency legislation, which required the Postulation Commission to give each aspirant a score based on several criteria, had made it impossible for the traditional judicial power brokers to push their lists of favorites through to Congress intact, as they had done in the past. Instead, each candidate had been subjected to individual review by his peers.

Civil Society Played Pivotal Role

13. (C) To buttress and review the work of the two Postulation Commissions (one for each of the Supreme and Appellate Courts; Congress has not yet elected the Appellate Court magistrates), USAID Guatemala supported the Pro-Justice Movement (MPJ). The MPJ consists of three leading human rights organizations, and includes leading activist Helen Mack. MPJ conducted a painstaking review of the candidates, and made its objections on human rights, narcotrafficking, corruption, and other grounds known through the media as well as through direct contacts with embassies and the commissions. MPJ is widely and appropriately credited with getting many of the worst candidates removed before their names could be forwarded to Congress.

Embassy Engagement with Judicial Kingmaker

14. (C) Drawing on information furnished by MPJ, NADIS namechecks, CICIG, and senior personnel at the Attorney General's Office (Secretary General Gloria Porras and Organized Crime Chief Prosecutor Rony Lopez, PROTECT), Pol/Econ Counselor worked with judicial power broker Roberto Lopez Villatoro to get some of the worst candidates removed from his lists (ref b). Known as "The King of the Tennis Shoes" for the fortune he made by mixing counterfeit shoes with genuine articles at his chain of Payless Shoe Stores, as well as by smuggling licit products (such as televisions and tires) into Guatemala for resale, Lopez is an influential attorney and businessman, and has family connections to former de facto President Efraín Ríos Montt. In May, Lopez told Pol/Econ Counselor he was concerned that attorneys with ties to narcotraffickers might be among those he was backing for the Supreme and Appellate Courts, and requested USG assistance in screening them. As a result of our cooperation, Lopez removed fifteen compromised candidates from his lists, including some with ties to narcotics and organized crime.

CICIG's Eleventh-Hour Intervention

15. (C) Emboffs shared favorable and derogatory information about candidates with the UN-led International Commission Against Impunity in Guatemala (CICIG). CICIG developed its own list of eight objectionable Supreme Court candidates mostly by using other sources. As Congress was about to begin voting on the candidates Sept. 29, Commissioner Carlos Castresana publicly denounced eight of the 26 candidates as unacceptable, and requested temporary suspension of the election. Castresana provided only minimal justifications for his objections, but privately shared his concerns about some of the candidates with the Ambassador earlier in the day. He noted, for example, that several had close ties to the governing UNE party; one had failed to disclose a government contract she received; another had been a defense lawyer for former civil patrol members (community-based army auxiliaries during the civil conflict period); and another had reduced the bail bond for former Minister of Defense Eduardo Arevalo Iacs, implicated in the Portillo corruption case. Castresana told the Ambassador he suspected some had relationships to drug trafficking or other criminal organizations, but did not offer any proof. In a separate meeting, Castresana told G-13 representatives the new justices would make CICIG's work extremely difficult. G-13 representatives continue to debate how to respond to the new court selections. An EU statement and a message from the UNSYG are two of the options under consideration. (Note: We have since learned that one justice, Manuel de Jesús Pocasangre, allegedly was a business partner of imprisoned former Deputy and Mayor-Elect Manolo Castillo, a notorious narcotrafficker implicated in the 2007 PARLACEN murders. Somewhat less concerning is that justice-elect Hector Manfredo Maldonado worked as general counsel to a private security firm run by President Colom's discredited former security chief, Carlos Quintanilla, ref c). The Ambassador made public statements in support of Castresana, and worked the phones -- to no avail -- with the government, UNE, and GANA parties. In defiance of Castresana's eleventh-hour intervention, Congress -- led by the government's UNE bench -- elected the new court Sept. 30.

Appellate Courts Election Postponed

16. (U) Congress was to begin the election of appellate court magistrates Oct. 1, but postponed the session until Oct. 6 due to

the need to seek Constitutional Court approval for changing voting procedures. (Note: The oral vote procedure used for the Supreme Court election, which entailed every member of Congress reading aloud the names of all 26 candidates, is not feasible for the Appellate Courts voting because there are 180 candidates.) Emboffs have already shared favorable and derogatory information about some Appellate Court candidates with selected members of Congress. The leadership of the GANA party committed to supporting the candidacies of seven aspirants we identified as favorable, and to trying to exclude six candidates for whom we provided derogatory information.

17. (C) On October 2, the Constitutional Court is considering an injunction that could invalidate the selection of three of the worst new Supreme Court members. Constitutional Court members have told CICIG and others that they have been receiving anonymous threats; the Ambassador is calling them to express our support for their safety. The Constitutional Court decision could lead to confrontation with the Congress and executive branch.

Comment

18. (C) Guatemala's new Supreme Court (which should be sworn in NLT Oct. 13) appears to be an improvement over its deeply corrupt predecessor, although we will have a better sense of its direction following some initial, telling actions. The reformed process that produced the new Supreme Court was also a major improvement over the previous, opaque process. USAID's support for the Pro-Justice Movement proved to be a resounding success, and we were pleased by judicial power broker Lopez's receptiveness to our suggestions for improving his lists of candidates. We would have preferred that CICIG Commissioner Castresana coordinate his intervention with us, in a timely fashion, although the Ambassador nonetheless supported his statement. Castresana's credibility took a hit when Congress overrode his last-minute, public allegations against eight candidates, for which he provided only minimal justifications (although we concur with some of his conclusions). The big unanswered question is how this new Supreme Court will work with CICIG on major prosecutions.

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